IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 19551 of 2007(C)

PETITIONER:
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1. ANILKUMAR,
DIRECTOR, QUILON PROCESSING AND MARKETING CO-OP. SOCIETY LTD., REGISTERED -Q.NO.74, KADAPPAKADA, KOLLAM DISTRICT.

2. ALEX MAMMAN,
DIRECTOR, PALAKKAD DISTRICT CO-OP. RUBBER MARKETING SOCIETY, PALAKKAD.

3. T.R. KELU,
DIRECTOR, NOROTH WAYANAD CO-OP.RUBBER AND AGRICULTURAL MARKETING SOCIETY, WAYANAD.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
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1. SECRETARY TO GOVERNMENT,
CO-OPERATION DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. MANAGING DIRECTOR,
KERALA STATE CO-OPERATIVE MARKETING FEDERATION, GANDHI NAGAR, ERNAKULAM.

3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.

4. THE ELECTORAL OFFICER,
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, ERNAKULAM.

BY GOVT. PLEADER SRI.P.N.SANTHOSH
ADV.SRI.MILLU DANDAPANI FOR R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 19551 OF 2007

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Dated this the 26th day of June, 2007

JUDGMENT

Case of the petitioners in brief is as follows:

First petitioner is the member of the Board of Directors of Quilon Processing and Marketing Co-op. Society. Society is one of the delegates for election to the apex body. Second petitioner claims to be the Director of Palakkad District Co-op. Rubber Marketing Society. The apex body is the Kerala State Co-operative Marketing Federation. Election to that body is proposed to be held on the 8th of July 2007 at Thiruvananthapuram. Ext.P1 is the notification. Ext.P2 is the list as per which 126 societies are entitled to vote. Petitioners, aggrieved by the inclusion of non-existing and defunct societies which are not entitled to exercise vote at all filed representations. Final list is published as Ext.P6 ignoring the objections of the petitioners. The ground taken by the petitioners is that the matter in issue is concluded by the decision of this court reported

in **Viswanathan v. The Assistant Registrar** (2001(3)KLT 215). It is stated that, therein this court has taken the view that a delegate sent up by an Administrator in charge of the affairs of a primary society shall not be eligible to vote at the election of the managing committee of the apex society. It is stated that this decision squarely applies to the facts of this case. It is stated that contrary to the legal principle evolved by this court, Electoral Officer in the rank of Joint Registrar has deliberately included ineligible societies in the voters' list and had got appointed Administrators to them, giving voting rights to such Administrators, representing defunct and non-existing societies. Rule 44 A of the Kerala Co-op. Societies Rules is violated, it is stated. 25 ineligible societies should have been deleted from the voters list considering the objections of the petitioners, it is stated. It is the further case of the petitioners that what is challenged is not the validity of the voters list, but the breach of the statutory provisions.

2. I heard learned counsel for the petitioners and the learned Government Pleader also.

3. Learned Government Pleader would point out that

there is an amendment in the law and Rule 44 A as it was considered by the Division Bench in 2001(3)KLT 215 has been modified. The Division Bench in 2001(3)KLT 215 took the view that a delegate sent by an administrator in charge of the primary society is not eligible to vote at the election to the managing committee of the apex society. The court took the view that he will be eligible to be elected as a member of the apex society, if he is otherwise qualified. This judgment was rendered on 14/08/2001. Subsequently, an amendment was inserted on sub Rule 2 of Rule 44A. The proviso as it stands reads as follows:

> " Provided that if the affairs of the society are managed by Administrator/ Administrators/ Administrative Committee appointed (under S.28 or S.32 or S.33) of the Act, the person or persons so appointed shall have power to nominate any member of the society to be its delegate in the other society and such delegate shall be eligible (to vote and) to be elected as a member of the committee of other society in which he sits as a delegate if he is otherwise qualified to be a delegate under the relevant rules."

4. Learned Government Pleader also points out that there is an amendment also in section 20. Earlier the word " active" qualified the word "member" no longer exists as by an

amendment inserted with effect from 04/05/2002, the word "active" is deleted. He would therefore contend that the legal matrix in the context to which the Division Bench decision was rendered no longer continues. All that is required is that there must be a member and even if the member is under the control of an administrator and the administrator sent up a delegate the said delegate has not only a right to stand in the election but also he has a right to vote, he contends.

5. Learned counsel for the petitioner would submit that this is a case where 25 societies included in Ext.P2 list are in fact defunct or non -existing. The device has been hit upon by which respondent has appointed Administrators for such societies, the result of which will be to derail the democratic process, he contends. He points out that this is a case where this court should adopt a procedure undertaken by the Division Bench in W.A. No.2775/99. That was a case where the Division Bench considered two contentions. Firstly it followed the judgment in 2001(3)KLT 215 and held that delegate sent up by the Administrator has no right to vote. Secondly, Division Bench also dealt with the situation where society is in liquidation and

liquidator is appointed under Section 72 and delegates were sent by the liquidator. The court found that there is no authority with the liquidator to sent up the delegate. It considered the stay petition and passed an interim order directing the Returning Officer to keep separate ballot boxes for the delegates of the Administrators and delegates of liquidators.

6. In the facts of this case, it is to be noted that after the change in law there cannot be any dispute that delegate sent up by Administrator is entitled to cast his vote under Rule 44A. Equally the concept of active member as it existed in the provisions in the pre-amended form is no longer relevant. Learned Government Pleader also points out that the list was published on 13/06/2007. Objections were given by the petitioners. Objections of the petitioners were in fact filed on the last date, it is pointed out. It is also pointed out that reply was also given to the petitioners pointing out the inability to act in the absence of sufficient materials.

I notice that none of the 25 members are made parties in this writ petition. Though learned counsel for the petitioners offered to implead them and take out notice, in the facts of this

case and the state of law as it stands, petitioners have not made out a case as such on the strength of the decision in 2001(3)KLT 215 or the judgment of the Division Bench in W.A. No.2775/99. Without prejudice to any of the right of the petitioners, the writ petition fails and it is dismissed.

(K.M.JOSEPH, JUDGE)

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